

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Martin Weel
Serial No. 10/840,109

Examiner: Le Hien Luu
Art Unit: 2448

Attorney Docket No. 1116-063

Filed: 05/05/2004

For: **PLAYLIST DOWNLOADING FOR DIGITAL ENTERTAINMENT NETWORK**

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

An **APPEAL BRIEF** is filed herewith. Appellant encloses a payment in the amount of \$540.00 as required by 37 C.F.R. § 41.20(b)(2). If any additional fees are required in association with this appeal brief, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

APPEAL BRIEF

(1) REAL PARTY IN INTEREST

The real party in interest is the assignee of record, i.e., Dryden Enterprises, LLC of 1000 North West Street, Suite 1200, Wilmington, Delaware 19801, which is a Delaware limited liability company.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences to the best of Appellant's knowledge.

(3) STATUS OF CLAIMS

Claims 35, 37–39, 41, 43, 45–50, 52, 53, and 59–62 were rejected with the rejection made final on June 8, 2010.

Claims 1–34, 36, 40, 42, 44, 51, and 54–58 were previously cancelled.

Claims 35, 37–39, 41, 43, 45–50, 52, 53, and 59–62 are pending and are the subject of this appeal.

(4) STATUS OF AMENDMENTS

All amendments have been entered to the best of Appellant's knowledge. No amendments have been filed after the Final Office Action mailed June 8, 2010 (hereinafter "Final Office Action").

(5) SUMMARY OF CLAIMED SUBJECT MATTER

In the following summary, Appellant has noted where in the Specification certain subject matter exists. Appellant wishes to point out that these citations are for demonstrative purposes only and that the Specification may include additional discussion of the various elements, citations to which are not pointed out below. Thus, the noted citations are in no way intended to limit the scope of the pending claims.

Independent claim 35 recites a method for obtaining media, the method comprising: displaying on a first device at least one device identifier identifying a second device (see **Figure 4, element 45; see also Specification, paragraph 0106**);

selecting, via user input at the first device, the at least one device identifier (see **Figure 4, element 45; see also Specification, paragraph 0106**);

receiving on the first device a playlist, the received playlist comprising a plurality of media item identifiers (see **Figure 4, element 44; see also Specification, paragraph 0105**);

selecting at least one media item identifier from the received playlist (see **Figure 4, element 46; see also Specification, paragraph 0108**); and

directing, from the first device, the second device to receive a media item identified by the at least one media item identifier from a content server, without user input via the second device (see **Figure 4, elements 48 and 49; see also Specification, paragraphs 0110 and 0111**).

Independent claim 48 recites a method for obtaining a song, the method comprising: obtaining a playlist on a first device over a network, the playlist comprising a plurality of song identifiers (see **Figure 4, element 44; see also Specification, paragraphs 0098 and 0105**);

displaying on the first device at least one device identifier identifying a second device (see **Figure 4, element 45; see also Specification, paragraph 0106**);

selecting, via user input at the first device, the at least one device identifier (see **Figure 4, element 45; see also Specification, paragraph 0106**);

selecting a song identifier from the playlist (see **Figure 4, element 46**; see also **Specification, paragraph 0108**); and

directing, from the first device, the second device to obtain a song identified by the song identifier without user input via the second device (see **Figure 4, elements 48 and 49**; see also **Specification, paragraphs 0110 and 0111**).

Independent claim 53 recites a device for selecting a media item, the device comprising: a display for displaying at least one device identifier and also for facilitating selection thereof (see **Figure 4, element 45**; see also **Specification, paragraph 0106**);

a network transceiver for facilitating communication between the device and at least one second device on a network (see **Figure 2, element 24**; see also **Specification, paragraph 0080**);

wherein the device is configured to facilitate:

displaying on the display the at least one device identifier identifying at least one second device (see **Figure 4, element 45**; see also **Specification, paragraph 0106**);

selecting, via user input at the device, the at least one device identifier (see **Figure 4, element 45**; see also **Specification, paragraph 0106**);

receiving a playlist via the network transceiver (see **Figure 4, element 44**; see also **Specification, paragraph 0105**);

selecting at least one media item name from the playlist (see **Figure 4, element 46**; see also **Specification, paragraph 0108**); and

directing, from the device, the at least one second device to send information representative of the at least one media item name to a content server without user input via the second device, and to obtain a media item corresponding to the at least one media item name from the content server (see **Figure 4, elements 48 and 49**; see also **Specification, paragraphs 0110 and 0111**).

Independent claim 59 recites a method for obtaining media, the method comprising: displaying on a first device at least one device identifier identifying a second device (see **Figure 4, element 45**; see also **Specification, paragraph 0106**);

selecting, via user input at the first device, the at least one device identifier (see **Figure 4, element 45; see also Specification, paragraph 0106**);

displaying on the first device a plurality of playlist names (see **Figure 4, element 41; see also Specification, paragraph 0105**);

selecting one of the plurality of playlist names (see **Figure 4, element 42; see also Specification, paragraph 0105**);

sending at least one attribute of a playlist corresponding to the selected playlist name to a playlist server (see **Figure 4, element 43; see also Specification, paragraph 0105**);

receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers (see **Figure 4, element 44; see also Specification, paragraph 0105**);

selecting at least one media item identifier from the received playlist (see **Figure 4, element 46; see also Specification, paragraph 0108**); and

directing the second device, without user input via the second device, to receive a media item identified by the at least one media item identifier from a content server and to play the media item (see **Figure 4, elements 48 and 49; see also Specification, paragraphs 0110 and 0111**).

Independent claim 60 recites a method for obtaining media, the method comprising:
displaying on a first device a plurality of device identifiers (see **Figure 4, element 45; see also Specification, paragraph 0106**);

selecting, via user input at the first device, one of the plurality of device identifiers, wherein the one of the plurality of device identifiers identifies a second device (see **Figure 4, element 45; see also Specification, paragraph 0106**);

sending at least one attribute of a playlist corresponding to a selected playlist name to a playlist server (see **Figure 4, element 43; see also Specification, paragraph 0105**);

receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers (see **Figure 4, element 44; see also Specification, paragraph 0105**);

selecting at least one media item identifier from the received playlist (see **Figure 4, element 46; see also Specification, paragraph 0108**); and

directing, from the first device, the second device to receive a media item identified by the at least one media item identifier from a content server without user input via the second device server and to play the media item (see **Figure 4, elements 48 and 49; see also Specification, paragraphs 0110 and 0111**).

Independent claim 61 recites a method of directing a second device from a first device, the method comprising:

displaying on the first device a plurality of device identifiers (see **Figure 4, element 45; see also Specification, paragraph 0106**);

selecting, via user input at the first device, one of the plurality of device identifiers, wherein the one of the plurality of device identifiers identifies the second device (see **Figure 4, element 45; see also Specification, paragraph 0106**);

sending, from the first device, at least one attribute of a playlist corresponding to a selected playlist name to a playlist server (see **Figure 4, element 43; see also Specification, paragraph 0105**);

receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers (see **Figure 4, element 44; see also Specification, paragraph 0105**);

selecting, at the first device, at least one media item identifier from the received playlist (see **Figure 4, element 46; see also Specification, paragraph 0108**); and

directing, from the first device and in the absence of user input via the second device, the second device to obtain a media item identified by the at least one media item identifier from a content server and to play the media item (see **Figure 4, elements 48 and 49; see also Specification, paragraphs 0110 and 0111**).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 35, 37–39, 41, 43, 45–50, 52, 53, and 59–62 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2005/0262204 A1 to Szeto et al. (hereinafter “Szeto”) in view of U.S. Patent Application Publication No. 2004/0119894 A1 to Higgins et al. (hereinafter “Higgins”) and U.S. Patent Application Publication No. 2005/0113946 A9 to Janik (hereinafter “Janik”).

(7) ARGUMENT**A. Introduction**

The Patent Office has not established a *prima facie* case of obviousness of the claimed invention. More specifically, the Patent Office has not shown where the cited references, either alone or in combination, disclose or suggest all the elements recited in the pending claims.

At a minimum, each of the independent claims in the subject application recites a feature wherein a first device directs a second device to obtain (or receive) a media item, such as a song, without user input via the second device. Because none of the prior art references cited by the Patent Office teach or suggest this feature, for at least this reason, such claims are allowable over the cited references.

As such, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims.

B. Legal Standards for Establishing Obviousness

Section 103(a) of the Patent Act provides the statutory basis for an obviousness rejection and reads as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Courts have interpreted 35 U.S.C. § 103(a) as a question of law based on underlying facts. As the Federal Circuit stated:

Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of nonobviousness.

Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 45 U.S.P.Q.2d (BNA) 1977, 1981 (Fed. Cir. 1998) (internal citations omitted).

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. Initially, the Patent Office must show that there is a suggestion to combine the references. *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999). Even if the Patent Office is able to articulate and support a suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template. *In re Fine*, 837 F.3d 1071 (Fed. Cir. 1988). To reconstruct the invention by such selective extraction constitutes impermissible hindsight. *In re Gorman*, 933 F.2d 982 (Fed. Cir. 1991). After the combination has been made, for a *prima facie* case of obviousness, the combination must still teach or fairly suggest all of the claim elements. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (CCPA 1974).

Some elements may be inherent within the reference. “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.’” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (quoting *Cont'l Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991)). “The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Ibid.* (citation and quotation omitted). Thus, the possibility that an element may be derived from the reference is insufficient to establish that said element is inherent to the reference.

Whether an element is implicitly or explicitly taught by a reference or combination of references is open to interpretation. While the Patent Office is entitled to give claim terms their broadest reasonable interpretation, this interpretation is limited by a number of factors. First, the interpretation must be consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); M.P.E.P. § 2111. Second, the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, (Fed. Cir. 1999); M.P.E.P. § 2111. Finally, the interpretation must be reasonable. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004); M.P.E.P. § 2111.01. This means that the words of the claim must be given their plain meaning unless Appellant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989).

If a claim element is missing after the combination is made, then the combination does not render obvious the claimed invention, and the claims are allowable. As stated by the Federal

Circuit, “[i]f the PTO fails to meet this burden, then the applicant is entitled to the patent.” *In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002).

C. Claims 35, 37–39, 41, 43, 45–50, 52, 53, And 59–62 Are Patentable Over Szeto In View Of Higgins And Janik

Claims 35, 37–39, 41, 43, 45–50, 52, 53, and 59–62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Szeto in view of Higgins and Janik. Appellant respectfully traverses. When determining whether a claim is obvious, an Examiner must make “a searching comparison of the claimed invention—*including all its limitations*—with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, “*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418, 82 U.S.P.Q.2d (BNA) 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

Appellant’s invention generally relates to intelligent remote control of one device (i.e., a second device) from another device (i.e., a first device). The first device is capable of displaying a playlist of media items, such as songs, and allowing a user to select a song from the playlist. The first device is also capable of displaying one or more second devices, and allowing the user to select a second device. The first device can then direct the second device to obtain or receive the song selected by the user on the first device without user input via the second device. Among other features, Appellant’s invention enables a first device which may not contain a copy of a song to direct a second device which does not contain a copy of the song to obtain a copy of the song and play the song.

Szeto discloses a combined Instant Messaging (IM) and media player application (IM player) (Szeto, Fig. 3 and paragraph 0023). The IM player interfaces with an IM server for IM messages and with a media server to obtain media (*Id.* at paragraph 0016). Szeto discloses that a first user may allow the IM server to update a second user’s IM player display with the name of a song being listened to by the first user (*Id.* at paragraph 0027). The name of the song is preferably listed as a hyperlink on the second user’s IM player (*Ibid.*). The second user may

activate or otherwise click on the hyperlink to cause the song to be streamed to the second user's IM player (*Ibid.*). Notably, Szeto teaches that each user must actively request the song by affirmatively selecting the hyperlink.

Higgins discloses a programmable remote control (PRC) (Higgins, Abstract). A user logs onto a service provider's application and creates a user configuration file which identifies the devices the user wishes to control with the PRC (Higgins, paragraphs 0033–0034, 0038). The service provider sends the appropriate remote control codes identified in the configuration file to the PRC to program the PRC (Higgins, paragraphs 0035–0036).

Janik discloses an audio converter device that can receive digital audio data and convert digital audio data into analog electrical data (Janik, Abstract). Janik discloses that a PDA can be used as a system controller by manipulating software on a personal computer through a wireless LAN communication link (Janik, paragraph 0106).

Claim 35

Appellant's claim 35 recites "*displaying on a first device at least one device identifier identifying a second device.*" The Patent Office concedes that this feature is not disclosed by Szeto (Final Office Action, page 3), but asserts that Szeto discloses "displaying on a first device one user identifier identifying a second device" and refers in particular to Figure 3 and paragraphs 0024–0029 of Szeto (Final Office Action, page 2; emphasis added). Appellant disagrees that Szeto discloses a user identifier which identifies a second device. Appellant submits that the user identifiers depicted in Szeto identify users, not devices. Appellant notes that the Patent Office's assertion touches on a primary deficiency of Szeto: Szeto has nothing to do with one device controlling another device, and consequently there is no reason for one device in Szeto to display the identifier of another device. Looking at Figure 3 of Szeto, an IM window 302 is depicted (Szeto, paragraph 0025). The IM window 302 displays a plurality of icons and user (not device) identifiers, identifying other users of the IM application. Nowhere does Figure 3 appear to display a device identifier identifying a second device. This is not surprising, because Szeto is focused on sharing music experiences, not on the remote control of devices (Szeto, paragraph 0023). For at least these reasons, Appellant respectfully disagrees that Szeto discloses the above-recited feature of claim 35.

Regarding Higgins, the Patent Office asserts that Higgins teaches using device identifiers for identifying devices (Final Office Action, page 3). Higgins relates to programming a programmable remote control (PRC). Appellant submits that Higgins contains no teachings, suggestions, or motivations that would lead one skilled in the art to combine the teachings of Higgins with the IM player of Szeto; nor, if one were motivated to do so, would the combination arrive at Appellant's invention. First, nothing in Szeto teaches or suggests the use of device identifiers in any context. Second, nothing in Szeto or Higgins teaches or suggests how device identifiers could be implemented in Szeto, and Appellant submits that doing so would require extensive modification of Szeto, which is not taught or suggested in Szeto or Higgins. Third, implementing device identifiers into Szeto would run contrary to Szeto's teachings: Szeto does not relate to directing a second device to obtain a song, but rather to providing a user with a means of determining what music other users are listening to, and, if desired, downloading the song via user input.

Appellant's claim 35 further recites "*directing, from the first device, the second device to receive a media item identified by the at least one media item identifier from a content server, without user input via the second device.*" The Patent Office correctly concedes that Szeto fails to teach or suggest this feature, but asserts that Janik discloses this feature (Final Office Action, page 3). Appellant respectfully disagrees. As discussed above, Janik discloses, among other features, that a PDA can be used as a system controller by manipulating software on a personal computer through a wireless LAN communication link (Janik, paragraph 0106). However, nowhere does Janik teach or suggest that the PDA can direct the stereo to receive a media item identified by a media item identifier from a content server under any circumstances, and certainly not without user input via the second device, as recited in Appellant's claim 35. Moreover, Janik contains no teaching, suggestion, or motivation for combining the features of Janik with Szeto. Implementing remote control of one device from another in Szeto would run contrary to Szeto's teachings: Szeto does not relate to directing a second device to obtain a song, but rather to providing a user with a means of determining what music other users are listening to, and, if desired, downloading the song via user input.

Because none of the references teach or suggest, alone or in combination, an ability for a first device to direct a second device to receive a media item identified on the first device from a

content server, without user input via the second device, Appellant submits that claim 35 is allowable over the cited references.

Moreover, in response to the Patent Office's assertion that it would be obvious to combine the teachings of Higgins and Janik with those of Szeto, Appellant submits that such a combination, even if appropriate, would not result in Appellant's invention. Further, such a combination would not be appropriate because the references contain no teachings, suggestions, or motivations to combine the references in a manner that would result in Appellant's claim 35. In the absence of such teaching, suggestion, or motivation, the Patent Office is using impermissible hindsight reconstruction in view of Appellant's specification and claims on appeal.

Claim 48

Claim 48 contains limitations that are substantially similar to those discussed above with regard to claim 35, and the arguments presented above are applicable to claim 48 as well. Claim 48, however, recites "*directing, from the first device, the second device to obtain a song identified by the song identifier without user input via the second device*" (emphasis added). Nothing in Szeto, Higgins, or Janik teaches or suggests an ability for a second device to be directed by a first device to obtain a song without user input. While Janik discloses an ability for a first device to perform certain functionality, such as volume control, song skip, and pause, on a personal computer, nothing in Janik teaches or suggests an ability for the PDA to direct the PC to obtain a song identified by a song identifier selected on the PDA (Janik, paragraph 0106).

Thus, for at least the foregoing reasons, Appellant submits that claim 48 is allowable over the cited references.

Claim 53

Claim 53 contains limitations that are substantially similar to those discussed above with regard to claim 35, and the arguments presented above are applicable to claim 53 as well. Claim 53, however, recites "*directing, from the device, the at least one second device to send information representative of the at least one media item name to a content server without user input via the second device, and to obtain a media item corresponding to the at least one media item name from the content server*." Nothing in Szeto, Higgins, or Janik teaches or suggests an

ability for a second device to be directed by a first device to send information representative of a media item name to a content server to obtain a media item corresponding to the media item name, without user input via the second device.

Thus, for at least the foregoing reasons, Appellant submits that claim 53 is allowable over the cited references.

Claim 59

Claim 59 contains limitations that are substantially similar to those discussed above with regard to claim 35, and the arguments presented above are applicable to claim 59 as well. Claim 59, however, recites:

*displaying on the first device a plurality of playlist names;
selecting one of the plurality of playlist names;
sending at least one attribute of a playlist corresponding to the selected playlist name to a playlist server;
receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers.*

The Patent Office fails to address this limitation in the Final Office Action (Final Office Action, page 4). Szeto fails to teach or suggest an ability to display a plurality of playlist names, select a particular playlist, and receive a playlist from a playlist server in response to the selection, nor does the Patent Office disclose where in Szeto this limitation is taught. Higgins and Janik similarly fail to teach or suggest such features.

Thus, for at least the foregoing reasons, Appellant submits that claim 59 is allowable over the cited references.

Claim 60

Appellant's claim 60 contains limitations that are substantially similar to those discussed above with regard to claim 35, and the arguments presented above are applicable to claim 60 as well. Additionally, claim 60 includes a feature wherein a plurality of device identifiers is displayed on the first device, and a device identifier identifying the second device is selected. Appellant's claim 60 further requires that the media item obtained from the content server is played on the second device. Nowhere does Szeto, Higgins, or Janik teach or suggest an ability

for a first device to direct a second device to obtain a media item from a content server without user input via the second device, and then to play the media item. For at least the foregoing reasons, Appellant submits that claim 60 is allowable over the cited references.

Claim 61

Appellant's claim 61 contains limitations that are substantially similar to those discussed above with regard to claim 35, and the arguments presented above are applicable to claim 61 as well. Additionally, claim 61 includes a feature wherein a plurality of device identifiers is displayed on the first device, and a device identifier identifying the second device is selected. Appellant's claim 61 further requires that the media item received from the content server be played on the second device. Nowhere does Szeto, Higgins, or Janik teach or suggest an ability for a first device to direct a second device to receive a media item from a content server in the absence of user input via the second device, and then to play the media item. For at least the foregoing reasons, Appellant submits that claim 61 is allowable over the cited references.

Claims 37–39, 41, 43, and 45–47 depend directly or indirectly from claim 35, and should therefore be allowable as depending from an allowable independent claim. Claims 49, 50, and 52 depend from claim 48, and should therefore be allowable as depending from an allowable independent claim. Claim 62 depends from claim 53, and should therefore be allowable as depending from an allowable independent claim.

D. Conclusion

For the reasons set forth above, the cited references do not disclose or suggest many of the features recited in Appellant's claims, and in particular do not disclose or suggest an ability for a first device to direct a second device to obtain or receive a media item without user input via the second device. The Patent Office has, using impermissible hindsight reconstruction in view of Appellant's specification and claims, suggested a combination of references that contain no teaching, motivation or suggestion for combining, and even if combined, would not result in Appellant's claimed invention. As such, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims.

Respectfully submitted,
WITHROW & TERRANOVA, P.L.L.C.

By:



Eric P. Jensen
Registration No. 37,647
100 Regency Forest Drive, Suite 160
Cary, NC 27518
Telephone: (919) 238-2300

Date: 8 May 10
Attorney Docket: 1116-063

(8) CLAIMS APPENDIX

1-34. (Cancelled).

35. A method for obtaining media, the method comprising:
displaying on a first device at least one device identifier identifying a second device;
selecting, via user input at the first device, the at least one device identifier;
receiving on the first device a playlist, the received playlist comprising a plurality of media item identifiers;
selecting at least one media item identifier from the received playlist; and
directing, from the first device, the second device to receive a media item identified by the at least one media item identifier from a content server, without user input via the second device.

36. (Cancelled).

37. The method as recited in claim 35, wherein the first device comprises one of a handheld portable device, a palmtop computer, an MP3 player, and a mobile phone.

38. The method as recited in claim 35, wherein the first device comprises a remote control operative to control the second device.

39. The method as recited in claim 35, wherein the first device comprises a remote control operative to control the second device and the second device comprises a media rendering device.

40. (Cancelled).

41. The method as recited in claim 39, further comprising adjusting at least one parameter on the second device from the first device selected from a group consisting of volume, tone, and balance.

42. (Cancelled).

43. The method as recited in claim 35, further comprising displaying a plurality of device identifiers on the first device, wherein each of the plurality of device identifiers identifies a corresponding device, and wherein selecting, via user input at the first device, the at least one device identifier further comprises selecting, via user input at the first device, the at least one device identifier from the plurality of device identifiers.

44. (Cancelled).

45. The method as recited in claim 35, wherein selecting the at least one media item identifier from the received playlist comprises selecting the plurality of media item identifiers from the received playlist in a first order, and directing the second device to receive the media item identified by the at least one media item identifier from the content server comprises directing the second device to receive a plurality of media items identified by the plurality of media item identifiers from the content server in the first order.

46. The method as recited in claim 35, wherein selecting the at least one media item identifier from the received playlist comprises selecting the plurality of media item identifiers from the received playlist in a first order, and directing the second device to receive the media item identified by the at least one media item identifier from the content server comprises directing the second device to receive a plurality of media items identified by the plurality of media item identifiers from the content server in an order other than the first order.

47. The method as recited in claim 35, further comprising automatically providing a recommendation of a playlist name based upon listening habits of a listener.

48. A method for obtaining a song, the method comprising:
obtaining a playlist on a first device over a network, the playlist comprising a plurality of song identifiers;
displaying on the first device at least one device identifier identifying a second device;

selecting, via user input at the first device, the at least one device identifier;
selecting a song identifier from the playlist; and
directing, from the first device, the second device to obtain a song identified by the song identifier without user input via the second device.

49. The method of claim 48, further comprising:

requesting, by the second device, the song identified by the song identifier from a content server; and
downloading the song from the content server to the second device.

50. The method of claim 48, wherein the network comprises the Internet.

51. (Cancelled).

52. The method of claim 48, further comprising effecting a volume of the song on the second device from the first device.

53. A device for selecting a media item, the device comprising:

a display for displaying at least one device identifier and also for facilitating selection thereof;

a network transceiver for facilitating communication between the device and at least one second device on a network;

wherein the device is configured to facilitate:

displaying on the display the at least one device identifier identifying at least one second device;

selecting, via user input at the device, the at least one device identifier;

receiving a playlist via the network transceiver;

selecting at least one media item name from the playlist; and

directing, from the device, the at least one second device to send information representative of the at least one media item name to a content server without user input

via the second device, and to obtain a media item corresponding to the at least one media item name from the content server.

54-58. (Cancelled).

59. A method for obtaining media, the method comprising:
displaying on a first device at least one device identifier identifying a second device;
selecting, via user input at the first device, the at least one device identifier;
displaying on the first device a plurality of playlist names;
selecting one of the plurality of playlist names;
sending at least one attribute of a playlist corresponding to the selected playlist name to a playlist server;
receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers;
selecting at least one media item identifier from the received playlist; and
directing the second device, without user input via the second device, to receive a media item identified by the at least one media item identifier from a content server and to play the media item.

60. A method for obtaining media, the method comprising:
displaying on a first device a plurality of device identifiers;
selecting, via user input at the first device, one of the plurality of device identifiers, wherein the one of the plurality of device identifiers identifies a second device;
sending at least one attribute of a playlist corresponding to a selected playlist name to a playlist server;
receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers;
selecting at least one media item identifier from the received playlist; and
directing, from the first device, the second device to receive a media item identified by the at least one media item identifier from a content server without user input via the second device server and to play the media item.

61. A method of directing a second device from a first device, the method comprising:
 - displaying on the first device a plurality of device identifiers;
 - selecting, via user input at the first device, one of the plurality of device identifiers, wherein the one of the plurality of device identifiers identifies the second device;
 - sending, from the first device, at least one attribute of a playlist corresponding to a selected playlist name to a playlist server;
 - receiving on the first device a playlist from the playlist server, the received playlist corresponding to the at least one attribute and comprising a plurality of media item identifiers;
 - selecting, at the first device, at least one media item identifier from the received playlist; and
 - directing, from the first device and in the absence of user input via the second device, the second device to obtain a media item identified by the at least one media item identifier from a content server and to play the media item.
62. The device of claim 53 wherein the device comprises a remote control device that is not capable of playing the media item corresponding to the at least one media item name.

(9) EVIDENCE APPENDIX

Appellant relies on no evidence, thus this appendix is not applicable.

(10) RELATED PROCEEDINGS APPENDIX

As there are no related proceedings, this appendix is not applicable.